

SDMS Document ID



2009624

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL
RELATIONS
CORRESPONDENCE CONTROL SLIP*Jim Christiansen*
*8EPR-SR**from*
Sandy
x6604

CONTROL NO: AL-0300018

ORIG. DUE DATE: 01/24/2003

EXT. DUE DATE: 01/28/2003

FILE CODE: 141-A CONGRESSIONAL CORRESPONDENCE

STATUS: PENDING

CORRES. DATE: 01/03/2003

RECEIVED DATE: 01/10/2003

ASSIGNED DATE: 01/14/2003

CLOSED DATE:

*response attached*FROM: MURRAY PATTY-D/WA
ORG: UNITED STATES SENATE
SALUTATION: DEAR SENATOR MURRAY
CONSTITUENT:
COMMITTEE:TO: ADMINISTRATOR
TO ORG: EPA
SUBJECT: QUESTIONS/PUBLIC HEALTH CRISIS CAUSED BY
ASBESTOS-CONTAMINATED VERMICULITE FROM THE FORMER W.R.
GRACE MINE NEAR LIBBY, MONTANA

ASSIGNED: SOLID WASTE & EMERG RESP

COPIES OF INCOMING PROVIDED TO: ADMINISTRATOR, DEPUTY ADMINISTRATOR,
OCIR/BETSY HENRYSIGNATURE: ADMINISTRATOR
INSTs: PREPARE FOR SIGNATURE OF CHRISTINE TODD WHITMAN,
ADMINISTRATOR. COPY ONTO A SEPARATE DISK (WP 6.1), SECURE DISK
TO PACKAGE AND RETURN TO OCIR (1304A), 4320 ARIEL RIOS, FOR
REVIEW, SIGNATURE AND DISPATCHING. DOCUMENT CANNOT BE
FORWARDED TO THE ADMINISTRATOR WITHOUT AA'S CONCURRENCE.

THE OCIR FOLLOW-UP CONTACT IS BETSY HENRY ON 202/564-7222.

COMMENTS:

IMS: CASSAUNDRA EADES
IMT: CASSAUNDRA EADES/DC/USEPA/US

	Assigned	Date Assigned	Code/Status	Date Completed by Assignee	Date Returned to OCIR:
Lead	R8	01/10/2003	ACTION	-	01/14/2003

PATTY MURRAY
WASHINGTON

COMMITTEES:
APPROPRIATIONS
BUDGET
HEALTH, EDUCATION, LABOR
AND PENSIONS
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510-4704

January 3, 2003

Christine Todd Whitman
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460-0001

Dear Administrator Whitman:

I have been closely following the Administration's response to the public health crisis caused by asbestos-contaminated vermiculite from the former W.R. Grace mine near Libby, Montana. I greatly appreciate the Environmental Protection Agency's (EPA's) aggressive efforts to clean up homes and properties in the area contaminated with the harmful substance. Thank you for your sustained commitment to addressing the crisis in Libby.

However, this problem is not limited to one small town in Montana; it is national in scope. Over the years, asbestos-contaminated vermiculite was shipped to more than 300 industrial sites around the country to produce consumer products such as insulation, fertilizers and soil conditioners. Twenty-two of these sites have required additional analysis and cleanup to prevent harmful exposure for workers and the public.

I understand that last spring EPA was planning to issue a public health emergency in Libby and to notify homeowners nationwide because insulation made with vermiculite from the mine there, known as Zonolite, may still be in as many as 35 million homes, businesses and schools. Most home owners and repair workers beyond Libby remain unaware of the risks of exposure to Zonolite, which can contain harmful levels of tremolite asbestos.

EPA never declared a public health emergency in Libby, reportedly in response to pressure from the Office of Management and Budget (OMB). I find it very troubling that OMB may have played a role in preventing EPA from warning people about Zonolite. Given the known health risks from exposure to asbestos fibers and what has happened in Libby, I would expect the Bush Administration to share my commitment to preventing any additional, harmful exposures to asbestos-contaminated vermiculite from this mine. I have asked OMB for an explanation of its influence on this decision, and I am hoping EPA can shed some additional light on why the agency abruptly reversed course on declaring the emergency and notifying the public.

2930 WETMORE AVENUE
SUITE 903
EVERETT, WA 98201-4107
(425) 259-6515

2988 JACKSON FEDERAL BUILDING
915 2ND AVENUE
SEATTLE, WA 98174-1003
(206) 551-5545

801 WEST MAIN AVENUE
SUITE 1213
SPOKANE, WA 99201-0613
(509) 624-9515

THE MARSHALL HOUSE
1323 OFFICER'S ROW
VANCOUVER, WA 98681-3858
(360) 686-7797

402 EAST YAKIMA AVENUE
SUITE 390
YAKIMA, WA 98901-2760
(509) 453-7462

I would like answers to the following questions:

1. What were EPA's recommendations on formation of a policy to inform consumers of potential dangers from exposure to Zonolite insulation?
2. To what extent were OMB and other federal agencies and departments involved in the decision whether to declare a public health emergency in Libby or to notify people nationwide of the dangers potentially posed by exposure to Zonolite?
3. What process did the Administration use in making these decisions? Specifically what roles did individual agencies play and who in these agencies was involved in the process?
4. Which outside parties, such as corporations, non-governmental organizations or associations, did EPA consult with on these decisions?
5. What was OMB's final recommendation to EPA? What recommendations, if any, did EPA receive from other federal agencies and departments?
6. Who ultimately directed EPA not to issue a public health emergency in Libby last spring nor to proactively notify the public in a proper manner?
7. What are the EPA's most current estimates of how many homes, businesses and schools still contain Zonolite? How did EPA derive these numbers?

I remain very concerned that millions of workers and homeowners are unknowingly exposing themselves to harmful concentrations of asbestos when coming into contact with Zonolite. I believe EPA's efforts to educate the public about this problem are currently passive and inadequate, for they remain limited to information on the agency's website.

Unfortunately, the federal government has a long legacy of failing to adequately protect people from exposure to asbestos, and W.R. Grace has a long legacy of withholding information about asbestos contamination from the public. The situation in Libby is a tragic testament to government inaction and corporate irresponsibility.

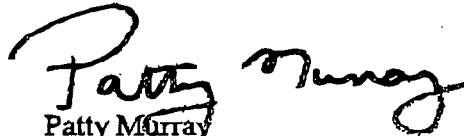
W.R. Grace documents show the company was aware of the problem as early as the 1960s, but chose not to warn consumers. By 1980, EPA knew vermiculite from the W.R. Grace mine was contaminated with asbestos and that some workers were suffering from health problems comparable to those experienced by people exposed to asbestos. The EPA Inspector General's Report on Libby revealed that despite this knowledge, EPA chose in the 1980s to focus on efforts to ban asbestos in consumer products instead of addressing the problems with asbestos-contaminated vermiculite from Libby. Unfortunately, this ban was overturned in court in 1991 because of an asbestos industry lawsuit, and the first Bush Administration decided not to appeal the decision to the U.S. Supreme Court.

We must end this failure to protect public health from the dangers of asbestos. That is why I introduced legislation last Congress banning asbestos in the United States by 2005 and requiring an education campaign about Zonolite within 6 months. I am planning to introduce the legislation again in the 108th Congress.

I would hope this Administration shares my commitment to ending the shameful legacy of inadequate protections against dangers posed by asbestos. However, this Administration's commitment is certainly now in doubt given EPA's failure to issue the public health emergency in Libby last year and to warn the public about potential dangers from exposure to Zonolite.

I look forward to your response.

Sincerely,


Patty Murray
U.S. Senator

Copy rec'd in 80C 1-21-03
 FYI copies to: Robert
 Dodson
 Vadehnal
 Garcia
 Christiansen
 Rennoek
 Wardell
 Thoni
 John
 from Sande
 x 6604



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 WASHINGTON, D.C. 20460

JAN 16 2003

THE ADMINISTRATOR

The Honorable Patty Murray
 United States Senate
 Washington, DC 20510-4704

2/14/03 Kerry's Bob

Dear Senator Murray:

Thank you for your letters dated January 3, 2003, to me and Mitch Daniels, Director of the Office of Management and Budget (OMB), regarding EPA's efforts to address asbestos contamination in the town of Libby, Montana. I am responding for both OMB and the Environmental Protection Agency (EPA).

I assure you that since my tenure at the Agency, every action regarding Libby, Montana has been taken with the goal of protecting the health of Libby residents from further harm. After visiting with the residents of Libby Montana in September 2001, I committed to have EPA do everything as quickly and comprehensively as possible to remove the multiple sources of asbestos exposure of Libby residents. The Action Memo signed on May 9, 2002, authorized significant additional measures in Libby, including the removal of attic insulation. Cleanup work has proceeded at an aggressive pace and substantial sources of exposure have already been removed.

While enclosed are EPA's Office of Solid Waste and Emergency Response detailed responses to your questions, I want to make it clear that neither OMB nor any other Federal agencies directed EPA to take a specific course of action regarding whether to employ the public health emergency provision of the Comprehensive Environmental Response and Liability Act ("CERCLA", or the Superfund Law). The Agency made its decision regarding the removal of asbestos contaminated vermiculite attic insulation from Libby homes in order to reduce the cumulative exposure to residents as quickly as possible. EPA based this decision on many factors, including legal, scientific, and practical considerations. The Agency concluded that asbestos contaminated vermiculite insulation found in homes in Libby could be removed without a public health emergency. Ultimately, EPA chose not to rely upon CERCLA's health emergency provision, in part, to minimize the possibility of removal work being delayed by possible legal challenges to this untested approach, and instead relied upon more traditional removal authorities.

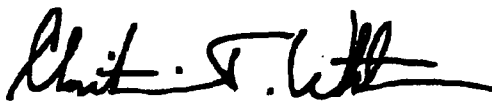
Additionally, I want to clarify that the decision to proceed with the cleanup in Libby is unrelated to the larger issue of whether asbestos contaminated vermiculite insulation poses a risk



outside of Libby, Montana. Several questions in your letter imply that invoking the public health provision in CERCLA for the situation in Libby would give the Agency additional authority or impose additional requirements to inform the public nationwide about the health risks associated with asbestos contaminated vermiculite attic insulation. This is not the case. While the experience and data collected in Libby are important to a larger national evaluation, the Libby cleanup and the Agency's national evaluation of the potential risks of asbestos contaminated attic insulation are on parallel but different tracks.

Again, thank you for your support of EPA's cleanup efforts in Libby, Montana and your commitment to making sure that people nationwide are not at risk from asbestos. The Agency looks forward to working with you and your staff to continue our mutual goal to protect the health and welfare of the residents of Libby, Montana, and of the United States. If you have further questions or concerns, please contact me, or your staff may contact Betsy Henry in the Office of Congressional and Intergovernmental Relations at (202) 564-7222.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Christine Todd Whitman", with a stylized flourish at the end.

Christine Todd Whitman

Enclosure

Enclosure
EPA Office of Solid Waste and Emergency Response and
Office of Prevention, Pesticides and Toxic Substances
Detailed Responses to Senator Patty Murray's Questions on Vermiculite Attic Insulation
and the Libby, Montana Clean-Up

1. *What were EPA's recommendations on formation of a policy to inform consumers of potential dangers from exposure to Zonolite insulation?*

The Agency's activity in Libby reflects a unique situation where citizens have been exposed for many years to widespread, high levels of asbestos contamination, and suffer unprecedented rates of asbestos related illness. After extensive consideration of scientific and health-related information, the Agency concluded that residents in Libby were a sensitive population, and asbestos exposure which would otherwise present an acceptable risk to a healthy population may cause an increase in disease for a highly impacted community like Libby. EPA decided to remove all potential sources of exposure to asbestos in Libby, including asbestos contamination in yards, playgrounds, parks, industrial sites, the interiors of homes and businesses, and vermiculite attic insulation.

The Agency's guidance to consumers outside of Libby has consistently been to manage in place asbestos or asbestos containing products found in the home. Based on currently available information and studies the Agency continues to believe that, absent the unique conditions present at Libby, vermiculite insulation poses minimal risk if left undisturbed. If removal of the insulation is desired, the Agency recommends that this work be done professionally.

To better understand the potential risks of asbestos contaminated vermiculite attic insulation, EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) initiated the first phase of a limited study to evaluate the level of asbestos in vermiculite attic insulation in homes in the Spring of 2001. The study included six homes in Vermont and simulations in an enclosure. This preliminary study will be used to help the Agency design the next phase of a more comprehensive study and to help determine whether the Agency's guidance in place for many years - to manage asbestos contaminated material in place or hire professionals to conduct removals - is still appropriate or should be revised. Formal external peer review is finished for the first phase of the study. The Agency's Office of Research and Development (ORD), as well as others, are currently reviewing the preliminary study.

Based on the findings from this study, EPA will revise or supplement the existing guidance and outreach materials as necessary, and further inform the public about how best to manage vermiculite attic insulation.

2. *To what extent were OMB and other federal agencies and departments involved in the decision whether to declare a public health emergency in Libby or to notify people nationwide of the dangers potentially posed by exposure to Zonolite?*

EPA consulted extensively with other federal and state partners in determining the best course of action to address all sources of asbestos contamination in Libby. This included the

Office of Management and Budget (OMB), the Department of Health and Human Services, the Center for Disease Control, the Agency for Toxic Substances and Disease Registry, U.S. Geological Survey, Occupational Safety and Health Administration, the State of Montana, and many others. These consultations focused on scientific issues associated with asbestos contaminated vermiculite exposure, not to discuss public health emergency declarations. The Agency was also contacted by several members of Congress who wished to express the depth of their concern and share their views regarding this matter. In general, EPA tries to share information and discuss potential response decisions with interested parties, especially those with expertise in the area, so it can make the most informed decision.

After consulting broadly with experts in the field, the Agency determined a course of action regarding both the removal of asbestos contaminated vermiculite attic insulation and the public outreach to be conducted beyond Libby, Montana. These decisions were made by the Administrator, in close consultation with the Office of Solid Waste and Emergency Response, the Office of Enforcement and Compliance Assurance, the Office of General Counsel, the Office of Prevention, Pesticides and Toxic Substances, and EPA Region 8.

3. *What process did the Administration use in making these decisions? Specifically what roles did individual agencies play and who in these agencies was involved in the process?*

EPA's primary focus was on protecting the residents of Libby by removing the multiple sources of asbestos exposure as quickly as possible. EPA considered many factors, including the National Oil and Hazardous Substances Pollution Contingency Plan. Ultimately, the Agency chose not to rely upon CERCLA's health emergency provision, in part, to minimize the possibility of removal work being delayed by possible legal challenges to this novel approach, and instead relied upon more traditional removal authorities. EPA concluded that homes in Libby contained vermiculite attic insulation that did not constitute a "product." The Agency therefore could clean up the insulation without addressing the question of whether it constituted a public health emergency.

In making its response decisions in Libby, EPA engaged in a major effort to discuss and consider the issues associated with its approach to cleaning up asbestos contamination, both in Libby and at more than 20 contaminated sites out of the 241 domestic vermiculite processing facilities. Although 175 of these sites had processed Libby vermiculite, EPA's sampling confirmed that contamination only remained at 22 sites. To date, EPA or the responsible parties have cleaned up or have cleanup underway at 10 of these sites and the remaining 12 sites are either being addressed or are under further investigation and response planning. This effort has been one of the most significant actions ever taken under the Superfund program, and has involved the participation and collaboration of a great many people and organizations at the local, state and federal level.

4. *Which outside parties, such as corporations, non-governmental organizations or associations, did EPA consult with on these decisions?*

During the more than two years in which EPA has been working on Libby, Agency officials have met with the Libby community and its Technical Assistance Group, other agencies, businesses in Libby and international corporations, various associations, the State and subcommittees of both houses of the U.S. Congress. Community members, the Vermiculite Association, and W.R. Grace Corporation have all corresponded with the Agency to state their opinions or to ask for information about our work at the site.

5. *What was OMB's final recommendation to EPA? What recommendations, if any, did EPA receive from other federal agencies and departments?*

Neither OMB, nor any other federal agency directed EPA to use a specific course of action regarding whether to employ the health emergency provision of CERCLA. As stated previously, EPA consulted extensively with other federal partners, including OMB, in determining the best course of action to address all sources of asbestos contamination.

6. *Who ultimately directed EPA not to issue a public health emergency in Libby last spring nor to proactively notify the public in a proper manner?*

No one directed the Agency. The decision was made by EPA. After searching broadly for input from the many agencies within the Executive Branch with expertise to inform our thinking, the Agency decided to perform the cleanup under traditional Superfund program removal authorities. Furthermore, regarding outreach on the Libby decision, the Agency has conducted many public meetings concerning the Libby cleanup, and testified before Congress in July, 2001. Since the Agency's first removal actions, the On-Scene Coordinator in Libby has been in regular contact with the citizens of Libby discussing the progress of the cleanup and communicating about the issues of the vermiculite attic insulation. The Administrator also spoke extensively on issues concerning vermiculite contamination during her visit to Libby, Montana in September of 2001.

7. *What are EPA's most current estimates of how many homes, businesses and schools still contain Zonolite? How did EPA derive these numbers?*

Over the years several attempts have been made to estimate the number of homes that may contain vermiculite attic insulation. While numbers have been included in at least one study conducted for the Agency in 1985, the Agency does not believe that these estimates are reliable. EPA recently again tried to estimate the number of homes, businesses and schools that may still contain vermiculite attic insulation but again determined that this task was virtually impossible to complete because there is little information about how many homes contain vermiculite insulation (outside of Libby) as well as little data about what happens to homes after they are built. Any numbers derived from such an effort would be inaccurate and misleading.

In the Libby valley, the Agency is identifying which homes contain asbestos contaminated vermiculite insulation in the attic and wall space by visually inspecting homes. The good news is that EPA is finding vermiculite insulation in fewer homes than the Agency anticipated in this region.